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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Telephone Number Portability
Cost Classification Proceeding

)
) CC Docket No. 95-116
)
) RM 8535
)

MEMORANDUM OPINION AND ORDER

Adopted: December 14, 1998

Released: December 14, 1998

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Common Carrier Bureau (Bureau) provides guidance to local exchange carriers (LECs) regarding the tariffs they may file for recovery of long-term number portability costs.¹ Specifically, we address issues related to the determination of the carrier-specific costs directly related to providing long-term local number portability (LNP) that are eligible for recovery through tariffed charges ("eligible LNP costs"). We also address the portion of joint costs² that LECs may treat as carrier-specific costs directly related to providing number portability, and prescribe a method for apportioning these costs among number portability and non-number portability services. We provide guidance to LECs and other carriers on the proper apportionment of number portability costs between end-user charges and query services charges. Finally, we provide guidance to the LECs and other interested parties on the cost support that must be provided in the LEC tariff filings.

¹ In the Matter of Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701, 11740 (1998) (*Third Report and Order*). The Bureau adopts the policies and procedures set out in this order pursuant to authority delegated by the Commission in the *Third Report and Order*. See *Third Report and Order*, 13 FCC Rcd at 11740, para. 75. See also 47 C.F.R. § 0.291.

² See *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

II. BACKGROUND

2. On May 12, 1998, the Commission issued the *Third Report and Order*, implementing section 251(e)(2) of the Communications Act of 1934, as amended,³ and promulgated rules governing long-term number portability cost recovery.⁴ The Commission concluded that the number portability costs that carriers must bear on a competitively neutral basis include the costs that LECs incur to meet the obligations imposed by section 251(b)(2), as well as the costs that other telecommunications providers - such as interexchange carriers and commercial mobile radio services providers - incur in implementing an industry-wide solution to local number portability.⁵ The Commission held that the costs of establishing number portability include the costs associated with the creation of the regional databases to support number portability⁶ and the initial upgrading of the public switched network, as well as, the ongoing costs of providing number portability, such as the costs involved in transferring a telephone number to another carrier and routing calls under the N minus one (N-1) querying protocol.⁷

³ 47 U.S.C. § 251(e)(2); see Telecommunications Act of 1996, § 101(a), § 251(e)(2), Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ *Third Report and Order*, 13 FCC Rcd at 11723, para. 35. Section 251(e)(2) of the Act provides that the costs of providing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." See 47 U.S.C. § 251(e)(2).

⁵ *Third Report and Order*, 13 FCC Rcd at 11723, para. 36. Section 251(b)(2) requires all local exchange carriers to provide number portability in accordance with the requirements prescribed by the Commission. See 47 U.S.C. § 251(b)(2).

⁶ Number portability will be deployed through a system of multiple regional databases. The regional databases will facilitate the provision of number portability by providing carriers with the number portability routing information that is necessary to route telephone calls between the carriers' networks. Each database serves an area that corresponds to one of the original regional Bell Operating Company Service territories. See *In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8399-8400, paras. 91-92 (1996) (*First Report and Order*).

⁷ *Third Report and Order*, 13 FCC Rcd at 11725, para. 38. Under the "N minus one," (N-1) querying protocol, the N-1 carrier is the carrier responsible for the query to the carrier's or a third party's service control point. The query is a call made to determine the address or location routing number (LRN) for the call. "N" is the entity terminating the call to the end-user, or a network provider contracted by the entity to provide tandem access. The N-1 carrier for a local call will usually be the calling customer's LEC and the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier. Carriers may arrange for other carriers or third parties to perform query services for them as long as that entity charges the N-1 carrier in accordance with the requirements established in this proceeding. If a call is not queried by the N-1 carrier, the call might be routed by default to the LEC that originally served the telephone number who will perform the default query for the N-1 carrier. The N-1 protocol was recommended by the North American Numbering Council (NANC), the industry and the state/regional workshops regarding the technical and operational standards for long-term number portability and was adopted by the Commission in the *Second Report and Order*. See *In the Matter of Telephone Number Portability, Second Report and Order*, 12 FCC Rcd 12281 (1997).

3. The *Third Report and Order* divided the costs produced by number portability into three categories: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability.⁸ Shared costs are defined as "costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability."⁹ Carrier-specific costs directly related to providing number portability are "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another."¹⁰ The Commission found that carrier-specific costs do not include, however, costs that carriers incur as an "incidental consequence of number portability."¹¹ Instead, the Commission stated that carrier-specific costs not directly related to providing number portability are not costs of providing number portability,¹² recognizing that carriers may incur a wide range of costs to provide telecommunications functions only incidentally related to number portability.¹³

⁸ *Third Report and Order*, 13 FCC Rcd at 11738, para. 68.

⁹ *Id.* at 11738-39, para. 69. *See also supra* note 6.

¹⁰ *Id.* at 11740. A number of incumbent LECs have filed petitions and tariffs requesting permission to provide local number portability query services on an interim basis. The Commission, deferring decision on whether the tariffs are lawful or that rates are just and reasonable, has required that the carriers conform their rates, rate structures, regulations, and services offered under these rate elements to any determinations made by the Commission in CC Docket No. 95-116. *See In re Number Portability Query Services, Tariff Investigation and Termination Order*, CC Docket No. 98-14, FCC 98-50 (rel. Mar. 30, 1998); *In re Number Portability Query Services, Order*, CC Docket No. 98-14, FCC 98-204 (rel. Aug. 19, 1998) (The Order requires the carriers to file new rates, terms, and conditions for these query and database services at the same time they offer their long-term number portability end-user charges). *See also In re* Petition of Ameritech to Establish a New Access Tariff Service and Rate Elements Pursuant to Part 69 of the Commission's Rules, *Memorandum Opinion and Order*, 12 FCC Rcd 17605 at paras. 1, 13-17 (1997); *In re* Petition of Southwestern Bell Telephone Company Under Section 69.4(g)(1)(ii) of the Commission's Rules for Establishment of New Service Rate Elements, *Memorandum Opinion and Order*, 13 FCC Rcd 177 (1997); *In re* Petition of U S WEST Communications Inc. to Establish Part 69 Rate Elements to Offer Switched Access Transport for Local Number Portability, *Memorandum Opinion and Order*, 13 FCC Rcd 12673 (1998); *In re* Petition of Sprint to Establish Part 69 Rate Elements to Offer Switched Access Transport for Local Number Portability, *Memorandum Opinion and Order*, DA 98-1437 (Comp.Pric.Div., rel. Jul. 20, 1998); *see In re* Ameritech Revisions to Tariff, F.C.C. No. 2, *Memorandum Opinion and Order*, DA 97-2353 (Comp.Pric.Div., rel. Nov. 7, 1997). As of July 29, 1998, carriers may file tariffs with the Commission to establish new number portability rate elements without filing a petition. *See* 47 C.F.R. § 52.33.

¹¹ *Third Report and Order*, 13 FCC Rcd at 11740, para. 72.

¹² *Id.* at 11724, para. 37.

¹³ *Id.*

4. The Commission also determined in the *Third Report and Order* that LECs may recover their carrier-specific costs directly related to providing long-term number portability in two federal charges: (1) a monthly number portability charge to commence no earlier than February 1, 1999, that applies primarily to end-users;¹⁴ and (2) a number portability query-service charge that applies to carriers on whose behalf the LEC performs queries.¹⁵ The Commission delegated authority to the Bureau to determine appropriate methods for apportioning joint costs among portability and nonportability services and to issue any order to provide guidance to carriers before they file their federal tariffs.¹⁶ Interested parties were invited to submit comments by August 3, 1998, and reply comments by September 16, 1998. Seven comments and nine reply comments were received in response to the *Third Report and Order*.¹⁷

III. DISCUSSION

5. The discussion below first addresses the general standard by which LECs may determine those costs that we consider carrier-specific costs directly related to providing long-term number portability and which, therefore, are eligible for recovery through the number portability federal charges established by the *Third Report and Order*. Second, we discuss methodologies for measuring the three types of eligible LNP costs, that is, dedicated LNP costs, joint costs directly attributable to LNP functions, and overheads directly incremental to the provision of LNP functions. We also discuss "advancement" costs as a special category of joint costs. Third, we provide guidance on the allocation of these eligible costs among various LNP charges, that is, end-user charges and pre-arranged and default query charges. Finally, we discuss some specific cost support that we expect LECs to provide with their tariff filings.

A. Determining Costs Eligible for Recovery Through LNP Charges

1. General Standards for Identifying Eligible LNP Costs

6. The new federal charges, to be used by LECs as means of recovering eligible LNP costs, allow LECs a cost recovery mechanism in addition to the ordinary price caps or rate-of-return cost recovery mechanisms. The *Third Report and Order*, however, expressly

¹⁴ *Id.* at 11776, para. 142; *see also* 47 C.F.R. §§ 52.33(a), (a)(1).

¹⁵ *Third Report and Order*, 13 FCC Rcd at 11778, para. 147; *see also* 47 C.F.R. §§ 52.33(a), (a)(2).

¹⁶ *Third Report and Order*, 13 FCC Rcd at 11740, para. 75.

¹⁷ Appendix A lists the parties that filed comments and reply comments in response to the *Third Report and Order*.

specified that some of the costs LECs incur as a consequence of number portability are not "eligible" for recovery through the new, federal LNP charges established in the Order.¹⁸ The ordinary cost recovery mechanisms already generally provide LECs with the opportunity to recover costs incurred in modernizing their networks to keep pace with technological and market developments and to maintain high standards of service quality. LECs must, therefore, distinguish network upgrade costs and the carrier-specific costs directly related to providing long-term number portability. Only the latter are "eligible LNP costs" for the purposes of these federal LNP charges.

7. Similarly, incumbent LECs historically have been required to incur costs to accommodate their telephone operations to the presence of other carriers.¹⁹ For instance, incumbent LECs have not enjoyed free, unlimited and exclusive use of "telephone number resources."²⁰ Thus, the recent increase in new entrants, and growth in demand for number resources also has required that incumbent LECs implement number-conservation and number-management practices. These costs were among those considered as covered in LEC rates generally.

8. With the advent of LNP, LECs can no longer assume that telephone numbers beginning with a particular NXX are assigned to a particular switch and telephone company and must adapt many of their network functions to accommodate number portability. Many of the resulting costs would not have been incurred *but for* telephone number portability. While some of these costs are *for the provision of* telephone number portability, others are incurred because of the impact of portability on existing systems for providing repair and maintenance services, 911 services, service ordering, and other network functions.

9. In the *First Report and Order*, the Commission concluded that the 1996 Act provided for an extraordinary mechanism to recover certain eligible costs of providing number portability, in addition to the existing price caps and rate-of-return recovery mechanisms.²¹ In the *Third Report and Order*, the Commission limited the costs eligible for recovery through this new federal mechanism to "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers

¹⁸ *Third Report and Order*, 13 FCC Rcd at 11740, paras. 72-74.

¹⁹ For example, LEC switches contain translations tables that determine call routing to the appropriate carrier.

²⁰ See, e.g., The North American Numbering Plan, Section 3, Numbering Plan and Dialing Procedures from BOC Notes on the LEC Networks - 1994, Bellcore Special Report, SR-TSV-002275, Issue S, April 1994, at § 3.5.2.

²¹ *First Report and Order*, 11 FCC Rcd 8419-8410, paras. 131-132.

from one carrier to another."²² The Commission further specified that costs "that carriers incur as an incidental consequence of number portability, however, are not costs directly related to providing number portability."²³ The Commission, therefore, concluded that these latter costs have become ordinary costs of doing business in this new environment, and, thus, represent general network upgrades. LECs must distinguish the costs of providing local number portability itself, recoverable through the federal charges provided in the *Third Report and Order*, from general network upgrade costs recoverable through the price caps and rate-of-return mechanisms.

10. Consistent with the *Third Report and Order*, we adopt a two-part test for identification of the carrier-specific costs that are directly related to the implementation and provision of telephone number portability, that is, eligible LNP costs.²⁴ Under this test, to demonstrate that costs are eligible for recovery through the federal charges recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability service. We believe that the test adopted here is consistent with the *Third Report and Order's* narrow view of the costs directly related to providing number portability. Specifically, in the *Third Report and Order*, the Commission found that only incremental costs of LNP should be recovered through these federal LNP charges²⁵ and expressly rejected the recovery of costs incurred as an incidental consequence of number portability. The Commission's reasoning was that such costs, unlike costs incurred, for example, for the querying of calls and the porting of telephone numbers from one carrier to another, are not directly related to providing number portability.²⁶

11. In addition, we conclude that the two-part test we adopt to determine whether costs may be recovered through the federal charges recovery mechanism avoids overcompensation of LECs for their costs. That is, LECs are already deemed to be recovering costs of general network upgrades through standard recovery mechanisms and should not be allowed to recover such costs both through federal LNP charges and under price caps or rate-of-return regulation. In addition, as the Commission recognized in the *Third Report and Order*, some upgrades will enhance LECs' services generally, and at least some portion of such upgrade costs are not directly related to providing number portability.

²² *Third Report and Order*, 13 FCC Rcd at 11740, para 72.

²³ *Id.*

²⁴ See AT&T Comments at 3, 5 (proposing a test similar, if not identical, to the test we adopt herein).

²⁵ *Third Report and Order*, 13 FCC Rcd at 11740, para 74.

²⁶ *Id.* at para. 72.

For these reasons, we find that such costs should not be recoverable through federal LNP charges.

12. We recognize that as LECs prepare their tariffs, there will be a number of issues regarding which specific costs qualify as eligible LNP costs. For example, the definition of "for the provision of number portability" is likely to be an issue during review of the LNP tariffs. Several LECs argue that all costs that would not have been incurred but for portability should be included as eligible LNP costs.²⁷ In effect, these LECs would define "for the provision of portability" as including all costs related to any changes made necessary as a consequence of LNP. We disagree. In our view, the Commission adopted a very narrow definition of this phrase in the *Third Report and Order*, stating that the only eligible LNP costs are "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another."²⁸ The Commission specifically rejected the proposition that eligible LNP costs include all costs that carriers incur as an "incidental consequence of number portability."²⁹ For this reason, in submitting their tariffs, we require LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.

13. Some LECs have asserted that all of the Operations Support Systems (OSS) and other systems costs they have incurred as a result of LNP are "for the provision of number portability."³⁰ Their claims are based on the assertion that in the *First Report and Order*, the Commission stated that no degradation in the quality of any aspect of service received by any customer should result from the implementation of LNP.³¹ The statements relied on by these LECs occurred in the context of the discussion of particular database query methods.³² Specifically, degradation of the quality of service was one of several factors considered by the industry, the NANC, and the Commission in selecting a LRN-based method of number portability over a Query-on-Demand method. Thus, in that context, the Commission stated that, as a general matter, any long-term number portability must "not result

²⁷ Bell Atlantic Comments at 3-4; BellSouth Comments at 12; GTE Comments at 4; SBC Comments at 5; U S WEST Reply Comments at 3-4.

²⁸ *Third Report and Order*, 13 FCC Rcd at 11740, para. 72.

²⁹ *Id.*

³⁰ Letter from Marie Breslin, Director Federal Regulatory, Bell Atlantic, to Magalie Roman Salas, Secretary, FCC, dated November 6, 1998 at Attachment 2, 4; Letter from Kathleen B. Levitz, Vice President Regulatory, BellSouth, to Magalie Roman Salas, Secretary, FCC, dated November 6, 1998, Attachment at 7.

³¹ *First Report and Order* at 8378.

³² *Id.*

in unreasonable degradation in service quality or network reliability when implemented.³³ We note that while the Commission recognized that "[c]onsumers, both business and residential, rely on the public switched telephone network for their livelihood, health and safety," it also expressly stated that the implementation of any long-term method should not *unreasonably* degrade existing service quality or network reliability.³⁴ We do not interpret this performance criterion as authority for the proposition that all costs incidental to achieving that performance level are costs incurred "for the provision of portability." As noted above, we find that such a reading would render meaningless the language of the *Third Report and Order* regarding the definition of eligible LNP costs.³⁵

14. We also interpret the phrase "porting telephone numbers from one carrier to another" narrowly, as referring only to the systems for uploading and downloading LRN information to and from the regional Number Portability Administration Centers (NPACs) and for transmitting porting orders between carriers. Because some carriers may argue that this phrase encompasses a myriad of changes to OSS systems affected by the porting of a telephone number,³⁶ we again advise LECs to distinguish costs that fall under the narrower definition of this phrase and costs that might be encompassed in a broader interpretation of it in filing their federal tariffs.

15. Another issue that may arise in review of the LNP tariffs is the use of "annuities" to capture ongoing costs of providing LNP beyond the five-year recovery period provided for in the *Third Report and Order*.³⁷ For example, Ameritech states that it plans to include as a LNP cost the present value of expenses related to LNP during the recovery period and continuing perpetually.³⁸ Our reading of the *Third Report and Order* would preclude this approach. In our view, the Commission concluded in the *Third Report and Order* that, after the five-year recovery period, LNP would have become a normal network function and, thus, LECs would not be entitled to any further special recovery for costs

³³ *Id.* at 8378, para. 48.

³⁴ *Id.* at 8352, para. 55.

³⁵ *Third Report and Order*, 13 FCC Rcd at 11740, para. 72.

³⁶ Bell Atlantic Comments at 3; BellSouth Comments at 12; Sprint Reply Comments at 2.

³⁷ An annuity is an asset that pays a fixed sum at regular intervals over some specific period. Webster's Seventh New Collegiate Dictionary 36 (1967).

³⁸ Ameritech Comments, Appendix A at 3.

incurred in implementing number portability.³⁹ In addition, we note that standard rate-making principles prohibit the charging of future costs to current rate-payers.⁴⁰

16. We reject proposals by some LECs that the costs of interim number portability be included in eligible LNP costs.⁴¹ The Commission expressly determined in the *First Report and Order* that states would be responsible for allocation and recovery of these interim number portability costs.⁴² For this reason, LECs may not include such costs in their federal charges, but instead must seek recovery of these costs of interim number portability at the state level.

17. We also reject as flatly contradictory to the *Third Report and Order* the arguments by some LECs that all costs incurred after a certain date or within a certain time period should be eligible for recovery through the federal charges.⁴³ As discussed above, only costs that meet the "but for" and "for the provision of number portability" test may be recovered as a number portability cost. We believe that only a portion of the costs incurred after the date of implementation of number portability will meet this test.

18. On the same basis, we agree with AT&T that only new costs can be claimed as eligible LNP costs.⁴⁴ AT&T maintains that investments made by an incumbent LEC prior to LNP implementation cannot be considered direct costs incurred to provide number portability. AT&T states that an incumbent LEC's use of embedded facilities cannot give rise to costs directly related to LNP unless the incumbent LEC can show that the use of the facilities for the provision of LNP gave rise to new costs.⁴⁵ Otherwise, AT&T argues, allowing incumbent LECs to claim embedded investments as eligible LNP costs would grant them double recovery. We agree. We find it reasonable to bar recovery of costs incurred by LECs prior to LNP implementation and concur that permitting embedded investments to be eligible LNP costs would amount to double recovery of costs already subject to recovery through standard mechanisms.

³⁹ *Third Report and Order*, 13 FCC Rcd at 11777, para. 144.

⁴⁰ J. Bonbright, A. Danielsen, D. Kamerschen, Principles of Public Utility Rates 274 (1988).

⁴¹ Ameritech Comments, Appendix A at 5.

⁴² *See First Report and Order*, 11 FCC Rcd at 8443, para. 127.

⁴³ SBC Comments at 4.

⁴⁴ AT&T Comments at 4-5.

⁴⁵ AT&T Comments at 6.

19. Finally, we note that the need to distinguish between eligible LNP costs and general upgrade costs will require that LECs provide substantially more detail in filing their tariffs than is customary when filing new services tariffs under the price caps recovery mechanism. Without reaching a conclusion on the specific assumptions and costs included, we note that the study plan outlined by Ameritech in the appendices to its comments appears to propose the type of cost support study that we believe will be necessary to support and review the federal LNP charges.⁴⁶ We also note that the cost support submitted with the initial query service tariffs filed by several LECs was inadequate to enable the Commission, or interested parties, to ascertain that only eligible LNP costs had been included in the end-user and query service charges.⁴⁷

B. Methodologies for Measuring Eligible LNP Costs

20. Carrier-specific costs directly related to providing long-term number portability may be classified into three basic categories: (1) dedicated LNP costs; (2) joint costs of LNP;⁴⁸ and, (3) incremental overheads.⁴⁹ We discuss below methodologies for measuring each of these types of eligible LNP costs.

1. Dedicated LNP Costs

21. Dedicated LNP costs are the incremental costs of investments or expenses that are dedicated exclusively to provision of LNP functions. For example, the Commission has recognized that the costs of number portability software and costs for service control points (SCPs) and signal transfer points (STPs) reserved exclusively for number portability service are types of dedicated number portability costs.⁵⁰ Because no allocation among services is necessary, we believe that these costs are clearly identifiable. Moreover, as provided in the *Third Report and Order*, once shared industry costs have been allocated to individual carriers, they become direct, carrier-specific costs.⁵¹ These costs should be considered dedicated LNP costs and included in eligible LNP costs. Because, as discussed above, existing cost recovery mechanisms already provide for the recovery of embedded costs, we conclude that LECs may

⁴⁶ See Ameritech's Comments, Appendices A, C, D and E.

⁴⁷ See *supra* note 10.

⁴⁸ *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

⁴⁹ *Id.* at para. 74.

⁵⁰ *Id.* at para. 73.

⁵¹ *Id.* at 11738, para. 69.

recover through the federal LNP charges only those costs that are demonstrably incremental costs LECs incur in the provision of long-term number portability.⁵²

2. Joint Costs of Providing LNP

22. *Joint costs* of providing long-term number portability are incremental costs associated with new investments or expenses that directly support the provision of LNP functions and also support one or more non-LNP functions. Identifying these costs may be more difficult, because the costs must be allocated among portability and non-portability functions.

23. We note that the Commission provided guidance on making this allocation by concluding that an incumbent LEC may treat as directly related to number portability only "that portion of a carrier's joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability."⁵³ We interpret the Commission's language regarding incremental costs as requiring that incumbent LECs subtract the costs of an item without the telephone number portability functionality from the total costs of that item with the telephone number portability functionality. Only the difference, the incremental cost incurred *for the provision of portability*, is an eligible long-term number portability cost.

24. This methodology assigns the "base portion" of joint costs to the non-portability services and identifies only the incremental costs incurred specifically for telephone number portability functions as eligible LNP costs. All other costs support non-portability services and must be considered general network upgrade costs, rather than costs of providing telephone number portability, even though these costs may not have been incurred absent telephone number portability. As discussed above, costs other than incremental costs must be recovered in the carriers' rates under the price caps and traditional regulatory cost recovery mechanisms.⁵⁴

25. In their comments, several of the parties provided lists of the additions or modifications to their networks that they contend have been made, or should be made, to equip their networks to provide long-term number portability.⁵⁵ Some of the parties assert that most, if not all, of the costs incurred for changes made to their networks are costs incurred for the provision of number portability and should be recovered through the end-user

⁵² *Third Report and Order*, 13 FCC Rcd at 11740, para. 73

⁵³ *Id.*

⁵⁴ See Section III.A.1, text of discussion at paragraph 9.

⁵⁵ Bell Atlantic Comments at 2-4, Attachments A, B; BellSouth Comments at 7-12 and 13-22, Attachment 1; U S WEST Comments at 8.

and query charges.⁵⁶ Specifically, some parties contend that all of the costs associated with Signaling System 7 (SS7)⁵⁷ and switch software upgrades, advanced intelligent network (AIN) modifications,⁵⁸ and OSS modifications⁵⁹ are directly related to the provision of number portability. Other parties contend that the present value of the money spent on advance purchases of software and hardware should be recovered as costs directly related to number portability.⁶⁰ In reply comments, other parties argue that only new investments should be attributed to number portability and that the Commission should not allow the incumbent LECs to recover the costs of general upgrades through the number portability charges.⁶¹

26. The Commission recognized that only a portion of the joint costs of software generics, switch hardware, and OSS, SS7, or AIN upgrades are carrier-specific costs directly related to number portability.⁶² The Commission concluded that these modifications and upgrades also provide a wide range of services and features unrelated to the provision of number portability and are recoverable by LECs in their rates for other services.⁶³

27. Several LECs have noted that they have had to purchase "generic upgrades" for switch software.⁶⁴ Some contend that they have purchased several versions to reach the LRN-capable version of software.⁶⁵ As stated above, recovery for network updates is provided through the ordinary price caps and rate-of-return mechanisms. That some LECs have delayed making updates to their networks, for which a recovery mechanism has already been provided, does not authorize them to recover those costs now through the federal LNP charges. The *Third Report and Order* expressly provides that only the incremental portion of the costs of generic upgrades due to LNP functions are eligible LNP costs.⁶⁶ As noted above,

⁵⁶ Ameritech Comments at 13-15; GTE Comments at 3-4; SBC Comments at 3, 5.

⁵⁷ Ameritech Comments at 13.

⁵⁸ Ameritech Comments at 13-14.

⁵⁹ BellSouth Comments at 12.

⁶⁰ BellSouth Comments at 2; U S WEST Comments at 10-11.

⁶¹ AT&T Comments at 6-7; Time Warner Comments at 8.

⁶² *Third Report and Order*, 13 FCC Rcd at 11740, paras. 73-74.

⁶³ *Id.*

⁶⁴ Bell Atlantic Comments at 7; U S WEST Comments at 4, 10.

⁶⁵ *Id.*

⁶⁶ *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

only the difference between the costs of the upgrades without the LNP functionality and the total cost of the upgrades with the LNP functionality is an eligible LNP cost.

28. We reject SBC's proposal that we allow 100% recovery of network upgrades where the date of the contract for the upgrade post-dates the date of the *First Report and Order*.⁶⁷ As noted above, we find that the incremental portion of the costs of the upgrade due to the provision of portability functions determines whether, and how much of, the costs of the upgrade are eligible LNP costs.⁶⁸ The date of the contract or contractual amendment is not determinative. We believe that this conclusion follows from the *Third Report and Order*'s definition of carrier-specific costs as those costs incurred *specifically* in the provision of number portability services.

29. Where an upgrade that meets our two-part test discussed above is not dedicated solely to number portability and is not available without the portability functionalities, we require LECs to make a special showing to establish the eligible LNP costs associated with the upgrade. The burden is on the LEC to demonstrate what portion, if any, of such upgrade should be attributed to LNP. Specifically, the LEC must demonstrate that all avoided costs and incremental revenues made possible by the upgrade will not cover the costs of the upgrade. The eligible LNP costs of the upgrade cannot exceed the remainder of the costs after subtracting all avoided costs and incremental revenues. We recognize that this calculation may not be as precise a method of identifying the incremental LNP costs of the upgrade as that used where upgrades without the portability functionalities are available. We may, therefore, also consider evaluating the reasonableness of the LNP costs claimed by a LEC by using as a benchmark the incremental portability cost of a similar upgrade provided by another vendor to another carrier where the upgrade is available without LNP.

30. Several commenters suggest that all costs related to advancing the deployment date of switches and software should be included as eligible number portability costs, even though the advanced deployments also benefit other services.⁶⁹ We disagree. As we found in considering what portion of generic upgrades should be eligible LNP costs recoverable through the federal LNP charges, we do not agree that the entire costs of an "advancement" should be recovered as number portability costs, especially where those costs were incurred for software generics, switch hardware, OSS, SS7, or AIN.⁷⁰ Although the costs of planned

⁶⁷ SBC Comments at 4.

⁶⁸ See, *supra*, at para. 17.

⁶⁹ BellSouth Comments at 3-4; GTE Comments at 3-4; U S WEST Comments at 10-11.

⁷⁰ Advancement costs are primarily those costs arising from the cost of money or the time value of money that have been incurred for the deployment of upgrades or modifications to the network at an accelerated pace or earlier date than provided for in the LEC's original plans.

upgrades may have been advanced by LNP requirements and LECs would not have deployed the upgrades early "but for" the Commission's portability implementation schedule, the associated upgrades provide general enhancements to LECs' networks. As such, we find that only the incremental portion of such costs directly related to the provision of number portability may be recovered as eligible LNP costs.⁷¹ Thus, LECs may claim only the advancement costs associated with the difference between the costs of the upgrade with the LNP functionality and its costs without that functionality. In such cases, LECs should provide evidence clearly demonstrating that the replacement or "advancement" is actually due to number portability and would not have occurred otherwise.

3. Overheads Incremental to Provision of LNP

31. In the *Third Report and Order*, the Commission recognized that LECs may incur overhead costs in conjunction with providing LNP and applied the same incremental approach for identifying eligible overheads as for identifying other eligible LNP costs.⁷² The Commission held that "carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability."⁷³ Thus, many of the same principles discussed above with respect to identifying direct and joint costs also apply with respect to eligible incremental overhead costs of LNP.

32. In addition to the costs incurred for changes made to their networks, commenters assert that some portion of overhead costs should be attributed to number portability. For example, Ameritech contends that general overheads should be added to the query charges.⁷⁴ AT&T, on the other hand, argues that because LECs' general overheads are not directly caused by number portability and the issue was decided in the *Third Report and Order*, the issue of overhead costs should be addressed in the order on the petitions for reconsideration of the *Third Report and Order*.⁷⁵

33. We find that only new overhead costs are eligible for recovery through the federal charges mechanism; no allocation of embedded overheads is permitted. The *Third Report and Order* clearly prohibits the use of general overhead factors, which are based on embedded costs. The Commission noted, "[c]arriers already allocate general overhead costs to

⁷¹ *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

⁷² *Id.* at para. 74.

⁷³ *Id.*

⁷⁴ Ameritech Comments at 6-8, 11; Ameritech Reply Comments at 2.

⁷⁵ AT&T Reply Comments at 4-5.

their rates for other services, and allowing general overhead loading factors for long-term number portability might lead to double recovery."⁷⁶ LECs must, therefore, demonstrate that any incremental overheads claimed are actually new costs incremental to and resulting from the provision of LNP.

34. We clarify, at Ameritech's request, that the *Third Report and Order's* restriction against the use of general overhead loading factors does not preclude the use of *incremental* allocation factors to identify the incremental portion of overhead costs directly related to number portability. Ameritech argues that identifying each new overhead cost associated with LNP would be impractical and extremely costly.⁷⁷ Instead, Ameritech proposes to conduct a special study of retail common costs to identify incremental overheads and assure no double recovery.⁷⁸ We note that Ameritech reported that its estimate of the magnitude of this incremental overhead is relatively small, about two percent of other eligible LNP costs.⁷⁹ We conclude that the use of incremental allocation factors determined through a special study of this nature is a reasonable method of determining incremental overheads associated with LNP and is consistent with the *Third Report and Order's* prohibition against the use of general overhead loading factors.

35. We disagree, however, with Ameritech's proposal to use general allocation factors in identifying incremental overheads to be applied in identifying costs to be recovered through query service charges to other carriers. The *Third Report and Order* prohibited use of general overhead loading factors in identifying eligible LNP costs, and did not distinguish between end-user and query services charges in this respect.⁸⁰ Thus, any overhead allocation factor to be applied to query service charges must be an incremental overhead based on a special study similar to the study Ameritech has proposed with respect to retail common costs, but adapted to apply to query services (wholesale common costs).

36. We agree with AT&T's suggestion that, in reviewing the reasonableness of incremental overhead allocations, we consider the allocation factors used by state commissions to price unbundled network elements (UNEs) for interconnection agreements.⁸¹ AT&T argues that the overhead figures in the unbundled network elements cost proceedings

⁷⁶ *Third Report and Order*, 13 FCC Rcd at 11740, para. 74.

⁷⁷ Ameritech Reply Comments, Appendix B.

⁷⁸ Ameritech Reply Comments, Appendix A at 5.

⁷⁹ Letter from James K. Smith, Director Federal Relations, Ameritech, to Magalie Roman Salas, Secretary, FCC, dated October 30, 1998, Attachments.

⁸⁰ *Third Report and Order*, 13 FCC Rcd at 11740, para. 74.

⁸¹ AT&T Reply Comments at 6.

provide a reasonable benchmark estimate of the true overhead costs that the Commission should expect to be created by LNP. AT&T further states that certain state commission decisions, listed in an exhibit attached to its Reply Comments, applied a standard identical to the standard established in the *Third Report and Order*.⁸²

37. We find that although a special incremental overhead study, such as the study proposed by Ameritech, is preferable to the use of the UNE overhead factors, these factors may serve as a useful check on the reasonableness of any such incremental overhead allocations. As additional information in support of the reasonableness of their incremental overhead factors, we also may look to overhead allocation factors incumbent LECs have used in "new services" tariffs under price caps during the past three years. Because some new services rates are established for highly competitive services, we believe this information may provide a useful additional test of the reasonableness of incremental overhead allocations.

C. Allocation of Costs to LNP Services

38. The *Third Report and Order* allows incumbent LECs to recover their eligible LNP costs through end-user charges and through charges to N-1 carriers for prearranged and default query services.⁸³ Some commenters suggest that LECs should file detailed cost information before we allocate number portability costs between the end-user and query services charges.⁸⁴ Other commenters state that each LEC should be allowed to use its own method of allocating the costs rather than using a uniform method.⁸⁵ We disagree with both contentions and find that we can provide LECs with guidance as to the proper allocation of LNP costs between the end-user charges and the query services charges to enable them to file their tariffs.

39. Commenters also propose differing methods of allocating the number portability costs between the end-user and query service charges.⁸⁶ Ameritech proposes to allocate costs between the end-user and query services based on the projected relative usage estimated by a demand forecast for each of the services.⁸⁷ Bell Atlantic proposes to allocate the costs of launching, transporting, and processing the query to the query service based on

⁸² AT&T Reply Comments at Exhibit 2.

⁸³ *Third Report and Order*, 13 FCC Rcd at 11776, 11778, paras. 142, 147.

⁸⁴ Time Warner Comments at 8.

⁸⁵ Cincinnati Bell Comments at 1.

⁸⁶ Ameritech Comments at 7, 12; Bell Atlantic Comments at 7.

⁸⁷ Ameritech Comments at 12.

the percentage of all database queries it performs for other carriers.⁸⁸ Other parties contend, however, that LECs should be allowed to develop an allocation method that is most suited to their unique situations⁸⁹ or based on the recommendations of the vendor that supplies particular systems.⁹⁰

40. Any portion of eligible LNP costs that is incurred specifically to provide N-1 query services should be allocated to those services. We note that some LECs have obtained waivers to allow several types of N-1 query service charges, including prearranged and default queries and, in some cases, database services.⁹¹ LECs that propose to establish several types of N-1 query charges should allocate eligible LNP costs incurred specifically to provide only one particular type of N-1 query service to that particular service. Likewise, any costs incurred only to provide portability functions for end-users should be allocated to that service. Remaining eligible LNP costs should be allocated among services in the manner discussed below.

41. We find that it is reasonable to allocate the remaining eligible LNP costs on the basis of the capacity requirements for each type of service. LECs electing to provide several types of N-1 query services should allocate costs to each service on the basis of capacity requirements for that service. We believe, based on the carriers' comments and our understanding of the engineering considerations involved, that system capacity is the principal factor driving LNP costs, at least for the switching and SS7 costs.⁹² The design capacity of the system is driven by peak load demands, usually measured in terms of expected demand at the busy hour. Thus, in engineering their LRN systems, LECs have forecasted peak load or "busy hour" demands for queries. These forecasts determined capacity requirements and, as a result, costs. LECs should allocate on this capacity basis any eligible LNP costs not incurred specifically to provide a particular type of query service.

42. Allocating remaining eligible LNP costs on a capacity basis will encourage a more efficient rate structure and, thus, lower total costs by encouraging efficiency. If the queries required by one type of service are concentrated during the "busy hour," that service requires more capacity than if its queries were distributed evenly throughout the day.

⁸⁸ Bell Atlantic Comments at 7.

⁸⁹ GTE Comments at 1, 5; Cincinnati Bell Comments at 1.

⁹⁰ Southwestern Bell Comments at 5.

⁹¹ See *supra* note 10.

⁹² Costs related to software priced on a particular basis should be allocated among services on that basis. For example, to the extent that software upgrade costs are incurred on a per-installed-line basis, these costs would be allocated to end-user services.

Likewise, a type of service for which queries largely occur "off-peak" imposes lower capacity requirements on the network than if its queries were distributed evenly throughout the day. To the extent that types of service differ significantly in the peak/off-peak pattern of their query demands, the share of costs they impose on the network may differ significantly from their share of total queries. If per query rates are based on averaged rates, a N-1 carrier may find it preferable to "dump" unqueried calls on the incumbent LEC during peak periods rather than to invest in expanding its own querying capacity. To the extent that this default querying occurs, these queries impose much higher than average costs on the LEC network. Charging "averaged" rates for queries that impose much higher than average costs encourages the "dumping" of queries during peaks and raises costs for all users.

43. The practical effect of allocating more costs to service types that demand disproportionately high capacity levels during peaks is that rates charged for these services will likely be higher. Although Commission rules have prohibited "penalty" charges, these higher rates would reflect the actual higher costs this traffic imposes. Allocating costs on this basis would establish rates that reflect true costs and thus encourage all carriers to find the most efficient way of handling their traffic.

44. Ameritech and Bell Atlantic propose to allocate costs between the end-user charges and the query services charges based on projected relative usage estimated by a demand forecast of the number of queries performed.⁹³ Ameritech and Bell Atlantic's proposals represent a traditional method of allocating telephone costs. We note, however, that LECs have developed estimates of total capacity requirements in the process of developing their cost support. Accordingly, we direct LECs to use relative capacity requirements to allocate costs among LNP services, rather than a relative usage basis, or provide specific evidence establishing that their demand forecast cannot be based on a relative capacity basis. We believe that relative capacity is more cost-causative than relative usage and, precisely because it reflects cost-causation, we conclude that it provides a competitively neutral basis for allocating costs to query services offered to other carriers.⁹⁴

D. Cost Support Summary

45. In this section, we provide guidance to LECs in the development of LNP service rates and supporting cost information to accompany their LNP service filings. LECs may file their tariffs pursuant to the *LEC Streamlined Tariff Filing Report and Order*.⁹⁵

⁹³ Ameritech Comments at 12; Bell Atlantic Comments at 7. Ameritech proposes to use demand forecasts from all N-1 carriers, network engineering traffic studies, billing data, and other assumptions to project demand.

⁹⁴ See, e.g., *Third Report and Order*, 13 FCC Rcd at 11731, paras. 52-53.

⁹⁵ Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, *Report and Order*, 12 FCC Rcd 2170 (1997) (*LEC Streamlined Tariff Filing Report and Order*).

46. Ameritech recommends treating LNP as a new service.⁹⁶ A new service is one that the carrier has not previously offered and that increases the range of service options available to ratepayers.⁹⁷ In the *Third Report and Order*, the Commission allowed incumbent LECs to recover their carrier-specific costs directly related to providing long-term number portability from end-users in a levelized, monthly federal end-user charge over a period of up to five years.⁹⁸ The Commission noted that once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis.⁹⁹ We conclude that the Commission intended that the federal end-user charge be a special charge outside of the existing price cap or rate-of-return recovery mechanisms.¹⁰⁰

47. Because the query service charge will not expire within a five-year period, but will continue to be a charge associated with LECs' continuing provision of long-term number portability, the query service charge must be included under price cap regulation. As noted below, we require price cap LECs to treat this charge as a new service within the meaning of section 61.49(g) of the Commission's Rules.¹⁰¹ We note that this treatment is consistent with those query service tariffs previously filed by LECs with the Commission.¹⁰²

1. Demand Units

48. LECs should explain demand assumptions and provide a workpaper that forecasts five-year levelized service demand. LECs should also state whether these assumptions include performing queries for all calls even in NXXs where no telephone number has been ported and explain why it is necessary to query all calls in this situation. Finally, LECs should explain any demand adjustments, such as for uncollectible revenue.

⁹⁶ Ameritech Comments at Appendix A.

⁹⁷ 47 C.F.R. § 61.3(t).

⁹⁸ *Third Report and Order*, 13 FCC Rcd 11776, para. 142.

⁹⁹ *Id.* at 11777, para. 144.

¹⁰⁰ *Id.*

¹⁰¹ 47 C.F.R. § 61.49(g).

¹⁰² See, e.g., Ameritech Transmittal No. 1149, Description and Justification (D&J) at 12 (filed, April 5, 1998); Bell Atlantic Transmittal No. 1036 (filed, Mar. 3, 1998); BellSouth Telecommunications, Inc., Transmittal No. 474, D&J at 3 (filed, Aug. 12, 1998); Frontier Telephone of Rochester, Transmittal No. 10 (filed, Aug. 12, 1998); SBC Transmittal No. 2694, D&J at 16 (filed, Mar. 4, 1998); Sprint Local Telephone Companies, Transmittal No. 63, D&J at 3 (filed, July 31, 1998); U S WEST Transmittal No. 931, D&J at 4 (filed, July 2, 1998).

2. Apportionment Between Services

49. Dedicated costs are associated with incremental investment exclusively related to providing LNP service. Joint costs are associated with investments used to provide more than one service. LECs must provide a worksheet for dedicated and joint costs, as defined in this Order, that includes the following information: (a) required LNP function and modification; (b) Part 32 account; (c) gross dollar investment; and (d) the percent assigned to non-LNP service and among the LNP services. LECs should state the methods used to assign that investment, *e.g.*, direct assignment or engineering studies. We note that the assignments to LNP services must use the incremental allocation methods described in Section III.A. and III.B. of this Order, and apportion these costs among various LNP services using the methodology described in Section III.C. of this Order.

50. The LNP functions should include (as reported for each type of service): (a) shared industry costs; (b) service management system (SMS) signalling link; (c) signalling control point (SCP); (d) SCP link; (e) signalling transfer point (STP); (f) STP link; (g) signalling switching point (SSP); (h) end-office switches; (i) tandem switches; (j) operating support system (OSS) modifications for support of the narrowly defined LNP functions described above; and (k) OSS modifications supporting other functions that the LEC claims are "for the provision of portability." LECs also should include other functions or sub-categories of information that would assist in supporting the costs that are being claimed and facilitate review.

3. Investment and Unit Costs

51. Differences in the duration of the various LNP charges will require different depreciation/amortization treatment. Costs for end-user charges should be amortized over the five-year recovery period. We note that costs, such as maintenance, to be incurred after the five-year recovery period may not be included in eligible end-user costs. The various query service charges are not limited in duration, and thus normal depreciation and amortization practices should be used with respect to these costs.

52. LECs must provide a series of charts showing their development of LNP charges. Chart 1 should show five years of investment, installation costs and recurring incremental expenses for all LNP services combined. In this chart, investments should be entered in the year in which they are made. No entries should be made for depreciation, amortization, return or taxes. In addition, the chart should include the number of lines, switches, expected total queries, links and any other relevant measures of cost and demand.

53. Chart 2a should show the costs from Chart 1 that are allocated to end-user service. This chart should show the basis of allocation to services (*i.e.*, direct assignment/attribution based on cost-causative factors/allocated based on relative capacity requirements). Chart 2b should show how the revenue requirement is developed from the

costs shown in Chart 2a. This chart should include the amortization over five years of the allocated investment, and return and taxes (show separately federal, state and local income taxes and other taxes). In addition, this chart should include service demand estimates and the calculations used to derive the proposed rate for the service. Years should be represented in columns and cost items in rows.

54. For each LNP query service, LECs should provide additional charts in the same format as Charts 2a and 2b. For query services, however, LECs should use normal depreciation rates instead of a five year amortization. Charts 3a and 3b should be used for prearranged queries; Charts 4a and 4b for default queries; and Charts 5a and 5b for database services. Use subsequent numbers in this series for any additional query service offerings. The sum of the costs allocated to specific services in the charts patterned after Chart 2a should equal the costs shown in Chart 1.

4. Cost Models Used to Develop Shared Costs

55. In the tariffing of open network architecture (ONA) elements, LECs were allowed to use computer models to calculate and allocate shared investment for open network architecture.¹⁰³ These LECs did not fully disclose those models on the public record because model inputs were deemed proprietary. The decision to allow LECs to use the models to justify costs, however, was based on a determination that the models were necessary to develop unit investment data due to the unique nature of ONA services. The Bureau required LECs to disclose edited versions of computer model software and documentation to interested parties and required that actual price lists and other vendor information be disclosed to intervenors. Further, the computer models were subjected to an independent audit by an accounting firm.

56. In contrast, in the 800 Database proceeding, the Bureau required any LEC using a computer model to justify rates to disclose its model on the record.¹⁰⁴ Alternatively, a LEC could develop costs by other methods, provided that those methods were disclosed on the public record. The Commission noted that some LECs that were allocating shared facilities had developed ancillary mechanisms for differentiating the 800 database costs. As in the 800 Database proceeding, we require LECs to disclose computer-cost models on the record, if they use such models to justify rates.¹⁰⁵ We note that, in the past, the use of

¹⁰³ Open Network Architecture Tariffs of Bell Operating Companies, *Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 1526 (1992).

¹⁰⁴ 800 Data Base Access Tariffs and the 800 Service Management System Tariff, *Order Designating Issues for Investigation*, 8 FCC Rcd 5132 (Com.Car.Bur. 1993)(800 Database Order).

¹⁰⁵ 800 Data Base Order, 8 FCC Rcd 5132; 800 Database Access Tariffs and the 800 Service Management System Tariff, *Order*, 9 FCC Rcd 715 (Com.Car.Bur. 1994).

computer cost models has generated significant controversy. The burden, therefore, rests on the incumbent LEC to explain fully all of the inputs, algorithms and assumptions of its computer-cost model.

5. Incremental Overheads

57. As discussed in section III.B.3. of this Order, LECs may not rely on general overhead allocation factors in identifying eligible LNP costs. LECs may claim only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability. In support of the reasonableness of these incremental overhead cost allocations, LECs should be prepared to supply to the Commission any special study performed by the LEC as described in section III.B.3 above, a list of overhead allocation factors used by states in any UNE pricing decisions, or a list of all overhead allocations used in the LEC's other new services filings during 1996, 1997 and 1998, or the three calendar years immediately preceding the LEC's filing, if necessary, in the course of any tariff investigation.

IV. REGULATORY FLEXIBILITY ACT

58. As required by the Regulatory Flexibility Act (RFA),¹⁰⁶ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order*. In addition, the Commission sought comments on the proposals included in the Initial Regulatory Flexibility Analysis (IRFA) in the *First Report and Order*. The Commission incorporated a Final Regulatory Flexibility Analysis in the *Third Report and Order*. The additional Regulatory Flexibility Analysis in this *Memorandum Opinion and Order* is as follows:

59. Need for and Objectives of Action: The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopted rules and procedures in the *Third Report and Order* that are intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." The Bureau, pursuant to authority delegated by the Commission in the *Third Report and Order*, issued this *Memorandum Opinion and Order* to

¹⁰⁶ See 5 U.S.C. § 601 *et seq.* The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

adopt policies and procedures regarding the proper cost identification and apportionment methods to recover costs of number portability.

60. Summary of Significant Issues Raised by the Public Response to the FRFA:

There were no comments submitted specifically in response to the Regulatory Flexibility Analysis. In the *Third Report and Order*, the Commission adopted rules and regulations to ensure that the way all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace. This *Memorandum Opinion and Order* provides guidance to local exchange carriers (LECs) regarding the tariffs they may file for recovery of long-term number portability costs. The *Memorandum Opinion and Order* addresses issues related to the determination of the carrier-specific costs directly related to providing long-term local number portability (LNP) that are eligible for recovery through tariffed charges ("eligible LNP costs"). This *Memorandum Opinion and Order* also addresses the portion of joint costs that LECs may treat as carrier-specific costs directly related to providing number portability, and prescribe a method for apportioning these costs among number portability and non-number portability services. The *Memorandum Opinion and Order* provides guidance to LECs and other carriers on the proper apportionment of number portability costs between end-user charges and query services charges. Finally, this *Memorandum Opinion and Order* provides guidance to the LECs and other interested parties on the cost support that must be provided in their tariff filings.

61. Description and Estimate of Number of Small Businesses to Which Actions Will Apply: The Regulatory Flexibility Act generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act.¹⁰⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰⁸ According to SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern.¹⁰⁹ This standard also applies in determining whether an entity is a small business for purposes of the RFA.

62. As described in the previous Regulatory Flexibility Analysis contained in the *Third Report and Order*, our rules governing long-term number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXC, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their field of operations or are independently

¹⁰⁷ See 15 U.S.C. § 632.

¹⁰⁸ *Id.*

¹⁰⁹ See 13 C.F.R. § 121.201.

owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of "small entities" and "small business concerns."¹¹⁰ Accordingly, our use of the terms "Small entities" and "small businesses" does not encompass small incumbent LECs.¹¹¹ Out of an abundance of caution, however, for regulatory flexibility analysis purposes,¹¹² we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

63. Insofar as our rules apply to all telecommunications carriers, they may have an economic impact on a substantial number of small businesses, as well as on small incumbent LECs. The rules may have an impact upon new entrant LECs and small incumbent LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimate that 2,100 small entities could be affected. We have derived this estimate based on the following analysis:

64. According to the 1992 Census of Transportation, Communications, and Utilities, there were approximately 3,469 firms with under 1,000 employees operating under the Standard Industrial Classification (SIC) category 481 -- Telephone. See U.S. Dept. of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities (issued May 1995). Many of these firms are the incumbent LECs and, as noted above, would not satisfy the SBA definition of a small business because of their market dominance. There were approximately 1,350 LECs in 1995. Industry Analysis Division, FCC, Carrier Locator: Interstate Service Providers at Table 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1995). Subtracting this number from the total number of firms leaves approximately 2,119 entities which potentially are small businesses which may be affected. This number contains various categories of carriers, including small incumbent LECs, competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these carriers—although not dominant—may not meet the other requirement of the definition of a small business because they are not "independently owned and operated." See 15 U.S.C. Section 632(a)(1). For example, a PCS provider which is affiliated with a long distance company with more than 1,500 employees would not meet the definition of a small business. Another example would

¹¹⁰ See *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45, 16149-50 (1996) (*Local Competition Order*), vacated in part, *aff'd in part*, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 792-800 & n. 21 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998).

¹¹¹ *Local Competition Order*, 11 FCC Rcd at 16150.

¹¹² See 13 C.F.R. § 121.902(b)(4).

be if a cellular provider is affiliated with a dominant LEC. Thus, a reasonable estimate of the number of "small businesses" affected by this Order would be approximately 2,100.

65. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules: The *Memorandum Opinion and Order* discusses the methods that LECs may use to identify the costs that are directly related to number portability. The *Memorandum Opinion and Order* provides guidance to the LECs regarding the end-user and query service tariffs they may file to recovery long-term number portability costs. The *Memorandum Opinion and Order* also instructs the LECs as to the identification of the portion of joint costs that may be treated as carrier-specific costs directly related to providing number portability and prescribes a method for apportioning these costs among number portability and non-number portability services. The *Memorandum Opinion and Order* also provides guidance to the LECs and to other carriers on the proper apportionment of number portability costs between end-user and query services charges.

66. The *Memorandum Opinion and Order* also provides guidance to the LECs and other interested parties on the cost support that must be provided in their tariff filings. The *Memorandum Opinion and Order* requires the LECs to file a study containing cost forecasts for the incremental costs incurred in the provision of number portability service, including data that shows costs that are levelized over a five-year period beginning on the effective date of the charge. The *Memorandum Opinion and Order* also directs the LECs to provide worksheets for dedicated and joint costs as defined in the *Memorandum Opinion and Order* to demonstrate the apportionment of these costs between number portability service and non-number portability services. The *Memorandum Opinion and Order* further requires the LECs to provide different depreciation/amortization treatment for the end-user charge. The LECs may also be required to file, during the tariff investigation phase of the proceeding, any special studies that were used as support for the incremental overhead cost allocations, a list of overhead allocation factors used by states in any UNE pricing decisions, or a list of all overhead allocations used in the LECs' other new services filings during 1996, 1997, and 1998, or the three calendar years immediately preceding the LECs' filings.

67. Steps Taken to Minimize Impact on Small Entities Consistent with Stated Objectives: The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. The Bureau has attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Memorandum Opinion and Order* concludes that the LECs may allocate eligible LNP costs on the basis of the capacity requirements for each type of query service. In engineering their LRN systems, the LECs have forecasted peak load or "busy hour" demands for queries.

These forecasts were determined capacity requirements and costs. Allowing the LECs to allocating eligible LNP costs in this manner will encourage a more efficient rate structure and will lower total costs. Furthermore, the *Memorandum Opinion and Order* instructs carriers on the identification of the portion of their joint costs that is demonstrably an incremental cost that they incurred in the provision of long-term number portability. Allowing such identification recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services.

68. Report to Congress: The Bureau shall send a copy of this *Memorandum Opinion and Order*, including this additional RFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹¹³ A copy of the *Third Report and Order* and this FRFA (or summaries thereof) will be sent to the Chief Counsel for Advocacy of the Small Business Administration.¹¹⁴

V. PAPERWORK REDUCTION ACT

69. This *Memorandum Opinion and Order* provides guidance to incumbent LECs regarding the tariffs they may file for recovery of long-term number portability costs and requests specific information to be filed in support of the tariffs. The *Third Report and Order* concluded that carriers may recover the portion of their number portability joint costs that is demonstrably an incremental cost incurred in the provision of number portability.¹¹⁵ The *Third Report and Order* also requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges.¹¹⁶ The Commission also concluded that carriers may identify only those incremental overheads that they can demonstrate were incurred specifically in the provision of number portability.¹¹⁷ We conclude in this *Memorandum Opinion and Order* that incumbent LECs must demonstrate that any incremental overhead costs claimed are actually new costs incremental to and resulting from the provision of LNP. This *Memorandum Opinion and Order* also states that the Bureau may request that the LECs file the following information: (1) any special studies that are conducted to support the reasonableness of the LECs' incremental overhead cost allocations; (2) a list of overhead allocation factors used by the states in any UNE pricing decisions; or (3) a list of all overhead allocations used in the LEC's

¹¹³ See 5 U.S.C. § 801(a)(1)(A).

¹¹⁴ See 5 U.S.C. § 604(b).

¹¹⁵ *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

¹¹⁶ *Id.* at 11776, para. 142.

¹¹⁷ *Id.* at para. 74.

other new services filings during 1996, 1997, and 1998, or the three calendar years immediately preceding the filing. This information may be reviewed in the course of any tariff investigation, once cost support information is filed pursuant to section 61.49 of the Commission's Rules. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

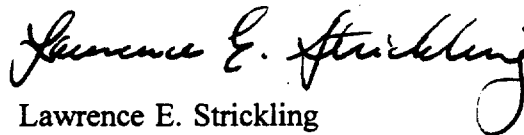
VI. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 203(c), 204(a), 205, 251, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 203(c), 204(a), 205, 251, and 403, and the authority delegated to the Chief of the Common Carrier Bureau pursuant to Sections 0.91 and 0.291 of the Commission's rules and regulations, 47 C.F.R. §§ 0.91, 0.291, the policies and requirements set forth herein are ADOPTED.

71. IT IS FURTHER ORDERED that LECs subject to the filing requirements of this Order are required to file their tariffs and cost support information as detailed herein.

72. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Memorandum Opinion and Order*, including the additional Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Lawrence E. Strickling
Chief, Common Carrier Bureau

Appendix A

Comments

Ameritech (Ameritech)
AT&T Corporation (AT&T)
Bell Atlantic (Bell Atlantic)
BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth)
GTE Service Corporation (GTE)
SBC Communications, Inc. (SBC)
U S WEST Communications, Inc. (U S WEST)

Reply Comments

Ameritech
AT&T
BellSouth
Cincinnati Bell Telephone Company (Cincinnati Bell)
Personal Communications Industry Association (PCIA)
SBC
Time Warner Communications Holdings, Inc. (Time Warner)
U S WEST